

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: PORTFOLIO RECOVERY
ASSOCIATES, LLC, TELEPHONE
CONSUMER PROTECTION ACT
LITIGATION

Case No. 11md2295 JAH(BGS)

This Document Relates to:
All Member cases:

**ORDER GRANTING THE
NATIONWIDE PLAINTIFFS'
UNOPPOSED MOTION FOR
LEAVE TO FILE AN AMENDED
CONSOLIDATED COMPLAINT
[DOC. # 61]; DENYING AS MOOT
DEFENDANT'S MOTION TO
DISMISS THE NATIONWIDE
PLAINTIFFS' CONSOLIDATED
COMPLAINT [DOC. # 43]; AND
VACATING HEARING DATE**

Pending before the Court is the nationwide plaintiffs' motion for leave to file an amended consolidated complaint and defendants' motion to dismiss plaintiffs' original consolidated complaint. *See* Docs. # 43, 61. Defendants have filed a statement of non-opposition to the nationwide plaintiffs' motion to amend. *See* Doc. # 65. After a review of the motion papers, the Court deems it appropriate to GRANT plaintiffs' motion and direct the Clerk of Court to file plaintiffs' amended consolidated complaint forthwith, thus rendering defendants' motion to dismiss plaintiffs' original complaint moot.

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DISCUSSION

The nationwide plaintiffs seek leave to file an amended consolidated complaint pursuant to Federal Rule of Civil Procedure 15. The filing of an amended complaint or counter-claim after a responsive pleading has been filed may be allowed by leave of court. FED.R.CIV.P. 15(a). Rule 15(a) provides a party the right to amend:

once as a matter of course within 21 days after serving it or, if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b),

(e), or (f), whichever is earlier. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

The Supreme Court has instructed lower courts to heed the language of Rule 15(a) to grant leave freely when justice requires. Howey v. United States, 481 F.2d 1187, 1190 (9th Cir. 1973). Because Rule 15(a) mandates that leave to amend should be freely given when justice so requires, the rule is to be interpreted with "extreme liberality." United States v. Webb, 655 F.2d 977, 979 (9th Cir. 1981).

Granting leave to amend rests in the sound discretion of the trial court. International Ass'n of Machinists & Aerospace Workers v. Republic Airlines, 761 F.2d 1386, 1390 (9th Cir. 1985). This discretion must be guided by the strong federal policy favoring the disposition of cases on the merits. DCD Programs Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir. 1987). Because Rule 15(a) favors a liberal policy, the nonmoving party bears the burden of demonstrating why leave to amend should not be granted. Genetech, Inc. v. Abbott Laboratories, 127 F.R.D. 529 (N.D. Cal. 1989).

However, even though leave to amend is generally granted freely, it is not granted automatically. See Zivkovic v. Southern Cal. Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002). Four factors are considered when a court determines whether to allow amendment of a pleading. These are prejudice to the opposing party, undue delay, bad faith, and futility. See Forsyth v. Humana, 114 F.3d 1467, 1482 (9th Cir. 1997); DCD Programs, 833 F.2d at 186; see also Foman v. Davis, 371 U.S. 178, 182 (1962).

These factors are not equally weighted; the possibility of delay alone, for instance,

1 cannot justify denial of leave to amend. *See DCD Programs*, 833 F.2d at 186; *Morongo*
2 *Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). The single most
3 important factor is whether prejudice would result to the nonmovant as a consequence of
4 the amendment. *William Inglis & Sons Baking Co. v. ITT Continental Baking Co.*, 668
5 F.2d 1014, 1053 (9th Cir. 1981).

6 The nationwide plaintiffs seek to amend their consolidated complaint to expand
7 factual allegations concerning defendant PRA Inc.'s liability for alleged violations of the
8 Telephone Consumers Protection Act, in response to some of the arguments presented in
9 defendants' motion to dismiss. *See* Doc. # 61 at 3. Defendants do not oppose the
10 motion but, instead, reserve the right to move to dismiss all or parts of plaintiffs' amended
11 complaint. Doc. # 65 at 2. This MDL case is in its infancy and, therefore the proposed
12 amendment does not appear to prejudice the defendants. Additionally, there is no
13 evidence the motion was brought in bad faith or will cause undue delay. As such, the
14 Court finds no valid reason to deny plaintiffs leave to amend.

15 CONCLUSION AND ORDER

16 For the reasons stated above, IT IS HEREBY ORDERED:

- 17 1. Plaintiffs' motion for leave to file an amended consolidated complaint [doc.
18 # 61] is **GRANTED**;
- 19 2. The Clerk of Court shall file plaintiffs amended consolidated complaint,
20 attached to plaintiffs' moving papers, *see* Doc. # 61-1, forthwith;
- 21 3. Defendants' motion to dismiss plaintiffs' original consolidated complaint
22 [doc. # 43] is **DENIED as moot**;
- 23 4. Defendants shall file their responsive pleadings to plaintiffs' amended
24 consolidated complaint in compliance with the Federal Rules of Civil
25 Procedure and the Local Rules of this District; and

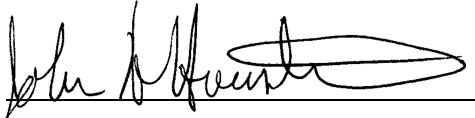
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1 5. The hearing set for November 26, 2012 on plaintiffs' motion to amend and
2 defendants' motion to dismiss is **VACATED**.

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4 DATED: November 13, 2012

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7 JOHN A. HOUSTON
8 United States District Judge
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